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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 LARRY GIRALDES, JR., NO. CIV. S-01-2110 LKK/EFB
12 Plaintiff,
13 v. O R D E R
14 T. PREBULA, et al.,
15 Defendants.

17 Plaintiff is a prisoner proceeding with appointed counsel,
18 seeking relief under 42 U.S.C. § 1983. Plaintiff claims that the
19 defendants violated the Eighth Amendment by failing to provide
20 adequate medical treatment for various ailments. This court issued
21 an order on February 24, 2012 granting plaintiff's motion to re-
22 open discovery and vacating all dates. Pending before the court is
23 defendants' motion for reconsideration of the February 24, 2012
24 order. For the reasons discussed below, defendants' motion to
25 reconsider is granted, but the court affirms its prior order.

26 || //

1 **I. Procedural Background**

2 Plaintiff filed this action in 2001, proceeding in pro se.
3 Plaintiff moved for appointment of counsel several times, and was
4 denied. In January, 2011, the magistrate judge appointed Ellen Dove
5 as counsel for all further proceedings. ECF No. 150. In July, 2011,
6 plaintiff submitted a declaration to the court stating that he had
7 had no contact with his appointed counsel. ECF No. 170. On
8 September 1, 2011, this court relieved Ms. Dove of her appointment
9 as counsel. ECF No. 184. On November 14, 2011, the court appointed
10 plaintiff's current counsel, David L. Milligan to represent
11 plaintiff. ECF No. 186. At a status conference held in chambers on
12 December 19, 2011, the court directed plaintiff's counsel to file
13 a motion to re-open discovery for the limited purpose of retaining
14 an expert witness. Plaintiff filed that motion on January 25, 2012,
15 ECF No. 189, and the court granted it.

16 **II. Standard for a Motion for Reconsideration**

17 Local Rule 230(j) applies to motions for reconsideration filed
18 in the Eastern District. That rule requires the movant to brief the
19 court on, inter alia, "what new or different facts or circumstances
20 were not shown upon such prior motion, or what other grounds exist
21 for the motion; and why the facts or circumstances were not shown
22 at the time of the prior motion." Fed. R. Civ. P. 60(b)(6) permits
23 a court to relieve a party from an order "for any. . . reason the
24 justifies relief."

25 **III. Analysis**

26 Defendant seeks reconsideration of the court's order re-

1 opening discovery on the grounds that "because plaintiff lacks the
2 ability to pay for his expert, and the Court may not pay that
3 expense, reopening discovery is pointless." Defs.' Mot. for Recon.,
4 ECF No. 193 ("Defs.' Mot."). Defendant asserts that under the Ninth
5 Circuit's holding in Tedder v. Odel, 890 F.2d 210 (9th Cir. 1989),
6 this court cannot pay for the expert witness because the in forma
7 pauperis statute, 28 U.S.C. § 1915, does not authorize the
8 expenditure of public funds on expert witnesses for indigent
9 parties. Absent express authorization, defendants argue, the court
10 may not spend public funds on behalf of an indigent litigant.
11 United States v. MacCollom, 426 U.S. 317, 321 (1976).

12 Defendants are correct that under Tedder and MacCollom, fees
13 for expert witnesses may not come from public funds appropriated
14 by Congress. However, in this district, the funds used to pay for
15 expert witnesses for indigent parties do not come from appropriated
16 funds.

17 In the Eastern District Court, as elsewhere, non-appropriated
18 funds may be used to reimburse attorneys appointed to indigent
19 parties for costs, including the cost for retaining expert
20 witnesses. See Eastern District Court General Order No. 510 §
21 4.A.3). These costs are reimbursed "from the Court's Non
22 Appropriated Fund." Id. That fund is "derived from attorney
23 admission fees and court imposed sanctions for violations of the
24 local rules and court orders not amounting to contempt." Eastern
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1 District Court General Order No. 154.¹

2 As explained in guidelines issued by the United States
3 Administrative Office ("AO"), these funds are "maintained locally
4 by the courts of the United States," and "are non-appropriated
5 funds held in trust by the courts." Guide to Judiciary Policy ("AO
6 Guide") Volume 13 § 1210.10. Funds raised from attorney admissions
7 within each court do "not belong to the United States, but belong[]
8 to the court and [are] to be administered in a manner outlined by
9 the court." Laughlin v. Clephane, 77 F. Supp. 103, 106 (D.D.C.
10 1947).

11 Pursuant to the Guide to Judiciary Policy, the funds "must be
12 used only for purposes which benefit the members of the bench and
13 the bar in the administration of justice." AO Guide § 1220. This
14 includes "reimbursement of pro bono counsel for out-of-pocket
15 expenses. . . and payment of witness fees and other expenses for
16 indigent pro se civil litigants." Id. at §1220(f). The fund may
17 also be used, according to the AO Guide, for such things as
18 maintaining a law library, furnishings and equipment for an
19 attorney lounge in the court. The Comptroller General of the United
20 States announced, in 1959, that he "would not further question such
21 practice" of district courts maintaining their own admission fee
22 funds without depositing them to the U.S. Treasury "unless and
23 until Congress should take action in the matter. Comptroller

24 _____
25 ¹ The court does not stop to consider whether defendant has
26 standing to object to the Eastern District's decision on how to
expend its own non-appropriated funds.

1 General of the United States Decision B-56200, March 31, 1959.

2 Accordingly, the court affirms its prior order reopening
3 discovery for the limited purpose of retaining an expert witness.²

4 **IV. Conclusion**

5 For the foregoing reasons, defendant's motion for
6 reconsideration, ECF No. 193 is GRANTED in part and DENIED in part.
7 The court has reconsidered its prior order, and AFFIRMS it.³

8 IT IS SO ORDERED.

9 DATED: April 17, 2012.

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12 LAWRENCE K. KARLTON
13 SENIOR JUDGE
14 UNITED STATES DISTRICT COURT

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23 ² This position is particularly important since in this
24 circuit, prisoner claims concerning medical malpractice require
expert testimony, Hutchinson v. United States, 838 F.2d 390, 393
(9th Cir. 1988), and thus a failure to provide expert testimony
renders the courts powerless to enforce the Eighth Amendment.

25 ³ Defendant requested a stay of proceedings pending appeal
26 should this decision be adverse to it. That motion is also denied.